IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 21662 of 2007(D)

OS.492/2004 of ADDL.SUB COURT, IRINJALAKUDA
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PETITIONER: 4TH DEFENDANT

BABY, AGED 49 YEARS, S/O. THATHRATHIL THAMBI VAREETH, NELLANKARA DESOM, NETTISSERY.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)

RESPONDENTS:
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1. **UNNIKRISHNAN, REPRESENTED BY MUKTHIAR AGENT, RAMESH S/O. CHENTHURUTHIYIL BAHULEYAN, VADAMA VILLAGE.**
2. **SOOSANNA, W/O. AKKARAKKARAN RAPPAI, CHERUVATHOOR, MANAVALASSERRY VILLAGE.**
3. **MARY, D/O. AKKARAKKARAN RAPPAI, -DO- -DO-**
4. **DADI @ JOSEPH, S/O. AKKARAKKARAN RAPPAI, -DO-**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 21662 OF 2007

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Dated this the 13th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order passed in I.A.1759/07 in O.S.492/04. The 4th defendant in the suit has raised the contention that the Court fee paid is incorrect and it has to be valued properly for the purpose of Court fee and jurisdiction with respect to the prayer A in the plaint. Court below found that since there is a prayer for partition no separate Court fee need to be paid for the prayer of declaration and in the light of the decision reported in ***Sankaran v. Velukutty (1986 KLT 94)*** negatived the request of the 4th defendant.

2. I had heard the counsel in detail. The present suit is one for setting aside the decree passed by the Munsiff Court, Irinjalakkuda in O.S.1749/99 and the subsequent proceedings as well as for setting aside the partition deed No.2324/02 and for a partition. So, the main relief sought for in the case is with respect to the setting aside of the decree

of the Court as well as the partition deed. It is true because when there is a decree and a document staring at the plaintiff necessarily the plaintiff has to avoid that document as per law and then only he will be entitled to get the relief of partition. So in this case, the main relief is for setting aside the document and the consequential relief is for partition. Therefore, the decision relied upon by the learned Subordinate Judge will not apply to the facts and circumstances of the case in question. Therefore, the learned Subordinate Judge is directed to consider the matter again after hearing the other side as well in the light of the discussions made above. The Court is also directed to raise an additional issue regarding the Court fee and consider it as a preliminary issue for determination and thereafter dispose of the matter in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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